

**BEFORE THE NATIONAL LABOR RELATIONS BOARD
UNITED STATES OF AMERICA
REGION 17**

BORG WARNER, INC.¹

Employer

and

Case 17-RC-12255

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS INTERNATIONAL UNION (UAW)

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Borg Warner, Inc. manufactures air pumps and other related products at its facility in Sallisaw, Oklahoma, where it employs 220 employees. The Petitioner, United Automobile, Aerospace and Agricultural Implement Workers International Union (UAW), filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent about 150 to 155 of the Employer's employees in a unit of full-time and regular part-time production employees, maintenance employees, quality control employees and other hourly employees employed at the Employer's Sallisaw facility. A hearing officer of the Board held a hearing and the Employer filed a brief with me.

The Petitioner and the Employer stipulated at the hearing that any unit found appropriate should include the following employees: All full-time and regular part-time production employees, maintenance employees, quality control employees, and product technicians, employed by the Employer at its Sallisaw, Oklahoma facility, excluding all other employees, including those temporary employees employed through temporary agencies, clerks, guards, and supervisors, as defined in the Act.

¹ The Employer's name appears as amended at the hearing.

While in agreement as to the composition of the remainder of the unit, the Parties disagree about whether the Employer's team leaders are supervisors within the meaning of Section 2(11) of the Act. The Petitioner asserts that team leaders are properly included in the appropriate unit because they are not supervisors, and because they share a community of interest with the remaining production and maintenance employees. The Employer contends that the team leaders are supervisors, and as such, should be excluded from the appropriate unit. If the team leaders are supervisors, the Parties further disagree about whether two employees, Vickie Real and Tim Sizemore, who are temporarily serving as team leaders, are eligible to vote. The Employer's position is that if Real and Sizemore are temporarily serving in the capacity of team leader at the time of the election, they should be allowed to cast a ballot, because they maintain their community of interest with the employees appropriately in the unit. However, the Employer argues that if Real and Sizemore have been permanently promoted to team leader positions as of the date of the election, they should be excluded as supervisors. The Petitioner's primary position concerning Real and Sizemore is that they should be allowed to vote because neither they, nor any of the team leaders, are supervisors. However, the Petitioner argues that if I find the team leaders to be supervisors, the temporary team leaders should be excluded from the unit along with the other team leaders.

I have considered the evidence and arguments presented by the parties. As discussed below, I have concluded that the Employer's team leaders are statutory supervisors and should be excluded from the unit.² Additionally, as to the two individuals temporarily serving as team leaders, I find that Real and Sizemore's supervisory duties are temporary in nature, warranting their inclusion in the unit. Accordingly, I have directed an election in the unit stipulated to be appropriate by the Parties, but will

² While I take administrative notice of the Decision and Direction of Election issued on May 21, 2003, in Case 17-RC-12183, in which I found that the team leaders were not supervisors, based on the record before me in the instant case, I have reached a different conclusion.

exclude the other team leaders from that appropriate unit because they possess supervisory authority within the meaning of Section 2(11) of the Act.

To provide a context for my discussion of these issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports each of my conclusions on the issues.

I.) OVERVIEW OF EMPLOYER'S OPERATIONS

The Employer manufactures and supplies transfer case pumps, mechanical air pumps, and electric air pumps to all of the major automotive markets. The Employer operates three shifts from its 250,000 square foot facility in Sallisaw, Oklahoma. There are a total of about 220 employees at the Sallisaw, Oklahoma facility, with 150 to 155 of those employed in the requested unit. The Employer's supervisory hierarchy is comprised of Derek Goodlin – Director of Operations; Gary March – Manufacturing Manager; Calvin O'Conner – Quality Manager; Matthew McConahy – Human Resources Manager; Phil Curtis – Plant Controller; Mark Lemp – Director of Engineering; Gary Pladino – Purchasing Manager; Tom Thomson – Production Systems Manager; Jim Oliver – Program Manager; Gary Stites – Accounting Manager; David Humphrey – IT Supervisor; William Bradbury – Tool Room/Crib Supervisor; Rick Coffman – Shipping & Receiving Supervisor; LaRue Logue – Continuous Improvement Manager; Jim Ackerman – Oil Pump Technical Services Supervisor; Myla Petree – Platform Manager; Johnny Dewbre – Facilitator; Sue Daniels – Facilitator; and Gary Young – Facilitator. The individuals named above possess the authority to hire, discharge, transfer, assign work, reward, layoff, discipline, recall, responsibly direct, promote, or adjust grievances or to effectively recommend those actions using independent judgment and the Parties' stipulated that the named individuals should be excluded from the unit found appropriate because they are supervisors. Based on the record evidence concerning the above named individual's supervisory authority and the Parties'

stipulation as to their supervisory status, I will exclude the individuals named above from the appropriate unit.

The Employer currently employs 11 permanent team leaders - Johnny F. Smith, Emmanuel Drew, George L. Blackburn, Justin Miller, Leslie J. Broyles, Charles E. Lucas, Christopher L. Murphy, Larry D. Davis, Justin Blakenship, Robert. W. Sheppard, and David Stults. Additionally, employees Vickie Real and Tim Sizemore are temporarily serving as team leaders. The team leaders report to the Employer's three facilitators, Johnny Dewbre, Sue Daniels, and Gary Young. The three facilitators work on separate shifts, and essentially operate as shift supervisors. The facilitators in turn have a dual reporting requirement to Myla Petree, the Platform Manager and Gary March, the Manufacturing Manager.

Team Leaders are paid hourly, as are other employees in the requested unit. Team Leaders are paid in the Employer's 7 through 9 pay classifications, which translates to between \$16.39 and \$17.82 per hour. Most of the remainder of the hourly production employees are paid at lower pay classifications than the team leaders. However, several of the Employer's maintenance classifications are more highly compensated than the team leaders. The team leaders share the same benefits as other hourly employees, including those employees stipulated to be appropriately in the unit. However, the Employer's salaried, supervisory and managerial employees also share the same benefits as all hourly employees. The only benefit that differs between hourly and salaried employees is the vacation benefit offered each group, with slight variations in accrual of vacation time between hourly and salaried employees.

II.) STATUS OF TEAM LEADERS

Before examining the specific duties and authority of the team leaders, I will briefly review the requirements for establishing supervisory status. Section 2(11) of the Act defines a supervisor as:

[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is well settled that Section 2(11) of the Act is to be read in the disjunctive and that possession of any one of the enumerated indicia establishes supervisory status, as long as the performance of the function is not routine or clerical in nature, but rather requires a significant degree of independent judgment. Stephens Produce Co., Inc., 214 NLRB 131 (1974); NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706 (2001). “A worker is presumed to be a statutory employee and the burden of proving a worker is a supervisor within the meaning of Section 2(11) of the Act falls on the party who would remove the worker from the class of workers protected by the Act.” Hicks Oil & Hickgas, Inc., 293 NLRB 84 (1989); Kentucky River Community Care, *supra*. “The Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights, which the Act is intended to protect.” Hydro Conduit Corp., 254 NLRB 433 (1981).

A.) Overview of Duties

Team leaders are assigned to various departments throughout the Employer’s Sallisaw facility. If a department does not have a team leader, the employees in that department report directly to a facilitator or to the shipping and receiving supervisor Rick Coffman. The number of employees under each team leader varies from department to department, and further fluctuates from week to week based on production needs. The following chart shows the team leaders, their departments, their shifts and the number of employees assigned to them at the time of the hearing, if known:

Johnny F. Smith	Dept. 105	First Shift	7 to 10 employees
Emmanuel Drew	Dept. 130	First Shift	7 to 10 employees
George L. Blackburn	Dept. 180	First Shift	5 to 7 employees
Justin Miller	Dept. 180	Second Shift	2 to 5 employees
Leslie J. Broyles	Dept. 190	First Shift	
Charles E. Lucas	Dept. 195	First Shift	
Christopher L. Murphy	Dept. 195 and 130	Second and Third Shift	8 to 10 employees
Larry D. Davis	Dept. 260	First Shift	5 employees
Justin Blakenship	Dept. 300	Second Shift	7 employees
Robert. W. Sheppard	Dept. 400	First Shift	20 employees
David Stults	Dept. 105	Second Shift	2 to 3 employees
Vickie Real	Dept. 300	First Shift	10 to 15 employees
Tim Sizemore	Dept. 130	Second Shift	8 employees

The Employer considers the team leaders to be supervisors and a part of the management team and the handbook distributed to employees identifies team leaders as occupying positions of authority. Team leaders attend training conducted exclusively for supervisors and managers at the plant, including training on employee movement, the FMLA, attendance monitoring, harassment, and issuance of corrective action. Team leaders also have access to confidential employee information available on a shared computer drive that limits access to supervisors and managers. Finally, team leaders do not routinely perform any production or maintenance work. Former team leader Sue Daniels, who is now the third shift facilitator, testified that as a team leader, she and her fellow team leaders spent no time

performing production or maintenance functions, other than occasionally filling in for an employee on a short break.

B.) Work Assignment, Responsible Direction, and Transfer

Team leaders are responsible for their department's production and scheduling of production. Scheduling of production is based on a daily updated production schedule. Based on both short-term needs and long-term production forecasts, team leaders monitor and adjust the number of employees needed to perform the work in their departments. If a team leader determines that his department has too many employees for the production requirements, the team leader can independently decide to send employees home for lack of work. Before sending an employee home for lack of work, the team leader may contact team leaders in other departments to ascertain if that department is short staffed and could use the employee. Additionally, the team leaders work together to transfer employees from department to department to accommodate production requirements, and to equalize the number of hours each employee works. The team leaders' transferring of employees based on departmental needs may result in the temporary promotion of employees if the employees are assigned to a higher job classification. Additionally, team leaders may move employees from shift to shift if needed, and the employee moved to another shift receives any shift differential necessitated by the transfer. Team leaders are required to fill out employee change forms to apprise the Human Resources Department of the movement of employees through the plant, and temporary changes in duty assignments. However, the initial decisions are made independently by the team leaders.

Team leaders also have the independent authority to determine the need for overtime in their departments. A team leader testified that given production needs, team leaders typically determine by Thursday whether overtime will be needed over the weekend. The team leader further testified that based on production projections, she would independently make that overtime determination, and

would only report the needed overtime hours to the platform manager so that he could track the dollar amounts for overtime in her department.

Finally, team leaders are solely responsible for monitoring employees' hours of work. The floorsheets kept by the Team leaders are the only documentation kept by the Employer to record employees' time. Team leaders approve employee vacation requests without oversight from higher-level management, and have unrestricted authority to grant days off. Additionally, team leaders have unrestricted authority to allow employees to leave early.

I find that the team leaders exercise independent judgment in their decisions concerning the staffing of their departments, including the authorization of overtime and approval of time off. The uncontroverted evidence shows that team leaders move employees within their departments, coordinate with other team leaders to move employees interdepartmentally, and move employees from shift to shift. Team leaders make these decisions without the need for approval from upper level management. Exercise of this type of authority is a clear indication of supervisory status. See, United Electrical and Mechanical, Inc., 279 NLRB 208 (1986).

C.) Discipline

The Employer has a four step disciplinary procedure, which calls for employees to receive a verbal warning, a written warning, a final written warning, and finally, termination. Team leaders have the authority to discipline employees under this policy, and have in fact routinely exercised this authority. The Employer's documentary evidence is replete with warnings issued to employees by team leaders, including warnings for attendance infractions, warnings for failure to follow instructions, a last chance agreement for substance abuse, and an extension of an employee's probation period. The documentary evidence further shows that team leaders initiate disciplinary measures for employees through correspondence with the Human Resources Department. A former team leader testified about

her experiences as team leader in disciplining employees, including verbal counselings and issuance of written warnings. The team leaders' authority to issue discipline to employees is clear evidence of their status as supervisors. See Progressive Transportation Services, Inc., 340 NLRB No. 126 (Nov. 26, 2003).

D.) Layoff

As is mentioned above in subsection B, team leaders are responsible for adjusting the number of employees in their department based on production needs. Team leaders have the authority to determine that employees should be laid off for lack of work based on long-term production forecasts. While the employees laid off are chosen based on seniority, the ability to determine that layoff is necessary, given production requirements, evinces supervisory status.

E.) Hiring of Employees

The Employer has not hired full time unit employees for over a year and a half, so the evidence of team leaders participation in hiring of full time employees is limited. However, the Employer does use temporary employees to fill labor shortages. The evidence shows that the team leaders independently determine the need for temporary labor based on production needs or employee absences. When a team leader determines that a temporary employee is needed, the team leader is empowered to directly contact the temporary agencies used by the Employer to obtain the necessary manpower. The evidence shows that team leaders frequently request temporary employees by name, and have rejected temporary employees and worked shorthanded if the employee they requested is not available. The Employer's Human Resource Department does require the team leader to complete an employee requisition form when using a temporary employee, but there is no requirement that the form be submitted prior to contacting the temporary service, and the form is often completed after the team leader has already procured the temporary employee. I find that the team leaders discretion in hiring of

temporary employees, including the discretion to determine the identity of the temporary employee shows independent judgment supporting a finding of supervisory status. See, Union Square Theatre Management, 326 NLRB 70 (1998)

F). Secondary Indicia

The authority to evaluate employees is not one of the enumerated criteria for determining supervisory status. However, where the evaluations can be linked directly to wage increases, rewards, promotions, retention, or in some other way affect the employee's employment status, such authority is evidence of supervisory authority. In the instant case, the evidence supports that team leaders have the authority to evaluate employees for promotion. Witness Matthew McConahy provided testimonial and documentary evidence showing that team leader Robert Sheppard and facilitator Johnny Dewbre both independently evaluated employees Charley Miller and Darrell Goodwin for a promotion to the position of cell leader. McConahy testified that the procedure for promotions is that the scores given to the applicants by the team leader and the facilitator are added together, and then divided in half. The candidate with the highest score is then awarded the position, as long as the threshold score of 70 is met. McConahy testified that based on this procedure, Goodwin was awarded the position, and that the team leader's evaluation was given equal weight to that of the facilitator. In these circumstances, it is clear that the team leaders' role in evaluating employees supports their supervisory status because the evaluations they perform are linked to employee's employment status.

Finally, if the team leaders are not supervisors, there would be only four supervisors, the three facilitators and the shipping and receiving supervisor, for approximately 150 unit employees. I find that such a disproportionate ratio of supervisors to rank and file employees supports the conclusion that the team leaders are supervisors. See, Bel-Air Mart, Inc., 203 NLRB 339 (1973); Silver Metal Products, Inc., 244 NLRB 25 (1979).

H). Conclusion

Based on the analysis above, I find that the Employer, as the party asserting supervisory status, has met its burden in proving that the team leaders have the authority to carry out the functions set forth in Section 2(11) of the Act, or to effectively recommend such functions and utilize independent judgment in the execution of such functions. Therefore, I find the team leaders are statutory supervisors and I will exclude the 11 permanent team leaders from the unit found appropriate here.

III.) STATUS OF TEMPORARY TEAM LEADERS

A.) Duties and Authority

As temporary team leaders, Real and Sizemore exercise the same authority over employees as the permanent team leaders described above. In support of that position, the Employer provided documentary evidence showing that since her assignment to a team leader position a month ago, team leader Real has signed off on timesheets for temporary employees and approved employees' vacation requests, all duties and responsibilities of permanent team leaders. While they have been serving as team leaders neither Real nor Sizemore have been performing their unit job duties, and instead, have devoted all of their work time to performing their team leader duties.

B.) Duration of Status as Team Leader

At the time of the hearing, Vickie Real had been a team leader on the first shift in Department 300 for about a month. Prior to serving as team leader, Real was a team member. The evidence shows that Tim Sizemore is temporarily filling a second shift team leader position in Department 130 for team leader for Charlie Lucas, who is working in Department 195 on the first shift. Prior to being assigned to cover for Lucas as team leader, Sizemore was a set up employee in Department 130. It is unclear from the record how long Sizemore has been filling in as the team leader in Department 130.

The only evidence in the record concerning how long the Employer anticipates Tim Sizemore and Vickie Real will serve as temporary team leaders comes from Human Resources Director Matthew McConahy and Facilitator Johnny Dewbre. Both McConahy and Dewbre testified that the Employer does not know how long either Real or Sizemore will continue in their capacity as team leaders, but both testified that Sizemore and Real are expected to return to their unit jobs after their stint as team leader is over. There is no evidence in the record as to whether either of these individuals has ever served in the capacity of team leader before, or whether it is anticipated that they will serve in this capacity again.

C.) Conclusion

I find that both Real and Sizemore are currently filling positions entailing their exercise of supervisory authority. However, I further find that Real and Sizemore's temporary assignment to supervisory positions does not warrant their exclusion from the unit. Where the employees at issue are engaged a part of their time in supervisory positions, and the rest of their time in nonsupervisory positions, the legal standard for determining whether they should be excluded from the unit is whether they spend a regular and substantial portion of their working time in a supervisory position, or whether such work is merely sporadic and insignificant. See, Aladdin Hotel, 270 NLRB 838, 840 (1984); Benchmark Mechanical Contractors, Inc., 327 NLRB 829 (1999). While Real and Sizemore currently spend a substantial portion of their time performing supervisory duties, I find that the temporary assignment of Real and Sizemore to positions as team leaders is not "regular" within the meaning of the Aladdin Hotel test. The Employer has admitted that Real and Sizemore will be returning to the unit. As such, the temporary, and potentially short-term assignment of Real and Sizemore to the position of team leader is insufficient to extinguish their community of interest with other employees. I find this particularly true where there is no evidence that either Real or Sizemore

have previously exercised supervisory authority, and where there is no actual showing of any likelihood that they will serve as supervisors in the future. See, Benchmark Mechanical Contractors, Inc., supra at 830; OHD Service Corp., 313 NLRB 901 (1994); St. Francis Medical Center-West, 323 NLRB 1046 (1997).

IV.) CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, quality control employees, and product technicians employed by the Employer at its Sallisaw, Oklahoma facility, but excluding all other employees, including those temporary employees employed through temporary agencies, clerks, guards, and supervisors (including team leaders), as defined in the Act.

V.) DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS INTERNATIONAL UNION (UAW). The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A.) Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B.) Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 8600 Farley, Suite 100, Overland Park, Kansas, on or before May 14, 2004. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (913) 967-3010. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C.) Notice of Posting Obligations

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation if proper

objections to the election are filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

D.) Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by May 21, 2004.

DATED at Overland Park, Kansas, this 7th day of May 2004.



/s/ D. Michael McConnell

D. Michael McConnell, Regional Director
National Labor Relations Board, Region 17
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